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ABSTRACT

Public utterances that defend illegal actions on moral grounds which supersede legal grounds display distinct rhetorical features. Rhetorical criticism of Thoreau's "Plea for Captain John Brown" (1859) and the Antony Towne and William Stringfellow letter in defense of the Berrigan brothers (1972) reveals five similar rhetorical strategies. These strategies tend to define the "genre" of discourse called "moral justification for legal transgressions." One line of argument is a defense of illegal actions by the invocation of higher moral law. Other approaches include the acknowledgement of the inevitability of and disregard for the punishment which ensues from the illegalities; an assailing of the government agency which precipated the events leading to the illegal acts and punishment; the identification of the accused with morally superior beings, using religious imagery as supportive argument; and the proclamation that the illegal acts measurably aid a good cause. These rhetorical approaches for the justification of illegal actions are in concurrence with earlier observations by rhetorical critics, especially Edwin Black. (CH)

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". . . And By Opposing, End Them." The Genre of Moral Justification for Legal Transgression

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Edwin Black, in *Rhetorical Criticism: A Study in Method*, observes that "there will be a limited number of ways in which rhetorical situations can be characterized."[1] While there will be factors peculiar to a given situation, recurrent characteristics will nevertheless make it possible for us "to construct an accurate and exhaustive typology of rhetorical situations." Black further concludes that since "there will be only a finite number of rhetorical strategies available to a rhetor in any given situation,"[2] the critic can identify certain strategies as characteristic of certain situations. To support Black's theses, I have chosen two examples of discourse which, while set in *apparently* dissimilar situations, still have enough fundamental commonalities to warrant comparison.

On October 30, 1859, Henry David Thoreau mounted the speaker's platform in Concord, Massachusetts to deliver his "Plea for Captain John Brown." Brown's raid upon the federal arsenal at Harper's Ferry, Virginia, and his attempt to lead a bloody slave insurrection for the cause of abolitionism, sent shock waves over the length of the land. In the South, Brown's raid was viewed as positive proof that the fanatical abolitionists would stop at nothing, even revolution, to achieve their ends. The North was strangely mute; until Thoreau's speech, not one person had publicly approved of Brown's raid. Even the *Liberator*, William Lloyd Garrison's fire-breathing abolitionist newspaper, pronounced the raid "a misguided, wild, and apparently insane-effort."[3] Thoreau, the solitary soul of Walden Pond, felt compelled by the indecisiveness of others to deliver the verdict himself, and in the verdict he abandoned his famous principle of passive resistance by

declaring Brown's actions justifiable.

The letter of Anthony Towne and Willam Stringfellow to the Berrigan brothers evolved out of a quite different set of circumstances from Thoreau's "Plea." Indicted themselves for harboring Daniel Berrigan following his conviction (along with Philip Berrigan and six others) for burning selective service records in Catonsville, Maryland, Towne and Stringfellow, unlike Thoreau, had long been actively involved in the peace movement. Unlike John Brown's bloody attempt at insurrection, the Berrigans were committed to non-violence, as their symbolic use of napalm and blood to burn the draft files tried to indicate. Whereas John Brown was determined to fight to the death following Harper's Ferry (indeed, his six sons were killed), the Berrigans waited to be arrested after burning the draft records.

That there are significant situational differences between Thoreau's "Plea" and the letter of Towne and Stringfellow is readily apparent. Separated by over 100 years, the incidents precipitating the two messages clearly differ. Thoreau's message is almost twenty pages long, the letter but three. Obviously, the audiences for the messages are different, as are the channels of communication.

Despite the many differences, there are enough points of similarity to warrant a comparison of the two documents, yielding, I hope, critical insight into a genre which I shall label "moral justification for legal transgressions." Both messages deal with illegal actions precipitated by offical government policy (i.e., slavery and the war in Viet Nam), policy which caused deep division throughout the country. Both messages have as their purpose the rallying of public opinion to a

cause.[4] Most significantly, both messages reveal remarkably similar lines of argument, suggesting that when a rhetor attempts justification for legal transgressions, certain *topoi* are prescribed by the situation. These *topoi*--the defense of actions by invoking moral law; the slight concern for punishment; the assailing of the government; the impact of the illegal actions; and the identification of the accused with morally superior beings--will be the concern of the remainder of the paper.

Although specific arguments justifying the actions of the Berrigans are less prominent than the arguments advanced by Thoreau in Brown's defense, in both cases the principle of moral law superseding legal dictates is operative. Throughout their letter, Towne and Stringfellow refer to the importance of "moral sanity" and of honoring one's conscience:

> We cannot forfeit our minds or turn off our consciences just because of real or supposed threats of persecution. To do so would be moral suicide.

Referring to the quite unconventional, and "only incidentally" criminal actions of the Catonsville events, they berate governmental prosecution which failed to acknowledge "the priority of conscience" exercised by the Catonsville 9.

Thoreau's higher law arguments are more explicit than those of Towne and Stringfellow. John Brown acted, not in obedience to a mere earthly dictate, but "in obedience to an infinitely higher command . . . ."[5] "He was a superior man. . . . He did not recognize unjust human laws, but resisted them as he was bid."[6] Thoreau's transcendentalism burns through his questions:

> Is it not possible that an individual may be right and a government wrong? Are laws to be enforced simply because they were made? or declared by any number of men to be good, if they are *not* good?
>
> . . . in cases of the highest importance, it is of no consequence whether a man breaks a human law or not.[7]

Congruent with the rhetors' belief that a higher law must be obeyed is the realization that punishment for transgressing secular laws will not be avoided, nor is it important that punishment be avoided. Towne and Stringfellow despair over the government's failure "to comprehend Catonsville as a liturgical event projecting and applying the promise of the renewal of society, . . ." but they acknowledge that incarceration is less important than the symbolic intent of the actions:

> . . . though you [the Berrigans] would not have been acquitted, the essential liturgical character of the witness would have been respected, . . . and the right of dissent in this society would have been protected.

That Thoreau also denies the significance of worldly punishment cannot be doubted. "I am here to plead his cause with you. I plead not for his life, but for his character--his immortal life." Indeed, the importance of Brown's life is eclipsed by the worth of his deeds:

> I see now that it was necessary that the bravest and humanest man in all the country should be hung. . . . I *almost fear* that I may yet hear of his deliverance, doubting if a prolonged life, if *any* life, can do as much good as his death.[8]

While both messages reveal the relative unimportance of punishment, the character of the agency responsible for precipitating the events leading to the punishment is assailed. Also, in both cases, the moral irony of the situations is emphasized. Although Towne and Stringfellow declare themselves "reluctant to endorse so caustic and despairing appraisal of the present administration as a capricious, fantasizing, morally ruthless government," their sentiments clearly lie in that direction. "We observe that the incumbent authorities, for all their solemnity, have a poor record for candor and a bad reputation for veracity." Most striking of the indictments against the government is the incredible irony of the situation:

> The official contempt for truth is breathtaking. At a time, when you, among the most notorious pacifists in the land, are being accused as terrorists, a President is simultaneously defending his moral commitment to violence in the invasion of Laos while styling himself a 'dedicated pacifist.'

Thoreau's "Plea" is similarly replete with assaults upon the character of the government and its ironical punishment of Brown, while

defending the institution of slavery. Thoreau depicts the slave ship on her way, "crowded with its dying victims," with a small crew of slaveholders "smothering four millions [of slaves] under the hatches."[9] Governmental response to this is to put forth "its strength on the side of injustice . . . and kill the liberators of the slave." By so doing, "it reveals itself a merely brute force, or worse, a demoniacal force."[10] To Thoreau, Brown's deeds are further enobled when juxtaposed to the governments actions:

> When I reflect to what a cause this man devoted himself, . . . and then reflect to what cause his judges . . . devote themselves, I see that they are as far apart as the heavens and earth are asunder.[11]

If the irony of the situations evokes incredulity and despair on the part of the rhetors, they find solace in the fresh impetus given their respective movements. The Berrigans' misfortune allows Towne and Stringfellow to "foresee an end to the tactical paralysis, which has bewildered and immobilized so many Americans . . . arising directly from the propitious coincidence . . . between the Harrisburg prosection and the presidental campaign." While the Berrigans might be reluctant to characterize their situation as a "propitious coincidence," Towne and Stringfellow clearly hope to gain idealogical capital from the events. "That coincidence [the campaign and the indictments] can end the time of quiescence, frustration, fatigue, indifference and fear which has so afflicted so many citizens so long."

Just as Towne and Stringfellow reflect on the practical

implications of the Berrigans' indictment, so Thoreau virtually exults in the impact of Brown's deeds:

> It is the best news that America has ever heard. It has already quickened the feeble pulse of the North. . . . How many a man who was lately contemplating suicide has now something to live for![12]

While one may be taken aback by Thoreau's exuberance over Brown's plight, the hermit *was* prophetic in recognizing the critical impact of Brown's aborted attempt. Historians agree that Brown's raid established a climate, both North and South, which made the Civil War virtually inevitable.[13] Thoreau's conception of the impact of Brown's raid extends also to posterity:

> I foresee the time when the painter will paint that scene, no longer going to Rome for a subject; the poet will sing it; the historian record it; . . . it will be the ornament of some future national gallery. . . .[14]

Again, Thoreau proves himself a seer, for in two years the words "John Brown's body lies a - mouldin' in the grave, but his soul goes marchin' on" would be sung by Union soldiers as they marched to engage the rebels.

Religious imagery pervades both messages, and the final line of argument common to both is the identification of the accused with morally superior beings. Towne and Stringfellow "recognize the sense in which the events which engulf all of us can be construed . . . as

an offense against the Gospel of Jesus Christ. . . ." They find governmental aggression "reminiscent of the anguisn and conflict endured by Christians in the Apostolic Church and in subsequent times," and the Berrigans themselves are as one with Saint Paul, accused and brought to trial, pleading "with respect to the resurrection of the dead I am on trial before you this day."

Thoreau's metaphor, consistent throughout the speech, hearkens also to the divine nature of Brown. The "divinely appointed" Brown, united with his "twelve disciples," do battle with the forces of "Pilate" in "their obscene temples."[15] Thoreau's identification is explicit:

> Some eighteen hundred years ago Christ was crucified;
> this morning, perchance, Captain Brown was hung.
> These are the two ends of a chain which is not without its links. He is not Old Brown any longer;
> he is an angel of light.[16]

Thoreau's hero, if not Towne and Stringfellow's, is depicted as literally transcending human kind:

> He could not be tried by a jury of his peers,
> because his peers did not exist.

Finally, Thoreau warns:

> You who pretend to care for Christ crucified,
> consider what you are about to do to him who
> offered himself to be the savior of four millions
> of men.[17]

Comparison of the two messages has thus revealed five conspicuous, similar lines of argument: actions are defended by invoking moral law; punishment for the actions is of little concern; the agency responsible for precipitating the events leading to the punishment is assailed; the impact of the illegal actions on the movement is deemed favorable; religious imagery, especially identification of the accused with morally superior beings, is employed. I have labeled this genre "moral justification for legal transgressions," not because this label subsumes all the lines of argument under it, but because both messages have as one of their major purposes a transcendent justification.

I have indicated earlier the many significant differences between Towne and Stringfellow's Letter and Thoreau's "Plea." The very fact that these messages were separated by over 100 years and so directed at very different audiences, that the messages concern different specific subjects and are precipitated by very different events, heightens considerably the import of the commonality of lines of argument used. This commonality found within vast differences supports Black's theses, and suggests that when the rhetorical situation is one of moral justification for legal transgression, the lines of argument outlined in this paper will be the lines of argument used to justify.

Footnotes

[1]Edwin Black, *Rhetorical Criticism: A Study in Method* (New York: The Macmillan Company, 1965), p. 133.

[2]*Ibid.*

[3]Henry David Thoreau, "A Plea for Captain John Brown," in *The Works of Thoreau*, ed. by Henry Seidel Canby (Boston: Houghton Mifflin Company, Cambridge Edition, 1937), p. 835.

[4]Even though the letter was sent to the Berrigans, the authors' acknowledge its public character; ". . . and if by this means [the letter] we hope to literally encourage our fellow citizens. . . ."

[5]Thoreau, p. 833.

[6]*Ibid.*, p. 837.

[7]*Ibid.*, p. 844-45.

[8]*Ibid.*, p. 845.

[9]*Ibid.*, p. 836.

[10]*Ibid.*, p. 839.

[11]*Ibid.*, p. 844.

[12]*Ibid.*, p. 843.

[13]David Brion Davis, *The Slave Power Conspiracy and the Paranoid Style* (Baton Rouge: Louisiana State University Press, 1969), pp. 34-35; Steven A. Channing, *Crisis of Fear: Secession in South Carolina* (New York: Simon and Schuster, 1970), pp. 19-23.

[14]Thoreau, p. 846.

[15]*Ibid.*, p. 837-38.

[16]*Ibid.*, p. 845.

[17]*Ibid.*, p. 844.